

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**ROSS UNIVERSITY SCHOOL OF
MEDICINE AND GLOBAL EDUCATION,**

Plaintiff,

vs.

BEHZAD AMINI,

Defendant

Case No.: 3:13 -CV-06121

DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT

Pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3)

Pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(3), Defendant respectfully files this Motion to Dismiss Plaintiff’s Complaint. The grounds for this motion are set forth more fully in the attached memorandum incorporated by reference herein.

Date: October 28, 2013

Behzad Amini – Pro Se
13835 N. Tatum Blvd #9-280
Phoenix, AZ 85032
602-980-0900
bccpda@yahoo.com

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	1
BACKGROUND	5
• GRIEVANCE HEARING PROCESS	8
• SETTLEMENT AGREEMENT	9
• BREACH OF CONTRACT: VIOLATION OF SETTLEMENT AGREEMENT.....	10
STATEMENT OF FACTS.....	12
<u>ARGUMENTS</u>	
I. 12(B)(2).....	13
II. 12(B)(3).....	21
CONCLUSION	22

TABLE OF AUTHORITIES

CASES	PAGES
<i>Carterer Sav. Bank, F.A. v. Shushan</i> , 843 F. Supp. 2d 584, 592 (E.D. Pa. 2012)	13
<i>Rehearing den., cert.den.</i> , 113 S.Ct. 61, 506 U.S. 817, 121 L.Ed.2d (1992)	13
<i>Decker v.Circus Circus Hotel</i> , 49 F.Supp.2d. 361 (D.N.J. 1999).....	13
<i>Young v. New Haven Advocate</i> , 315 F.3d 256, 261 (4th Cir. 2002)	13
<i>Giangola v. Walt Disney World Co.</i> , 753 F.Supp. 148 (D.N.J. 1990)	14
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462, 474 (1985)	14
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310, 316 (1945)	14
<i>Asashi Metal Industry Co. v. Superior Court</i> , 480 U.S. 102 (1987)	14
<i>Hanson v. Denckla</i> , 357 U.S. 235, 253 (1958)	14
<i>MCGEE V. INTERNATIONAL LIFE INSURANCE CO.</i> , 355 U.S. 220, 223 (1957)	14
<i>SUPERFOS INVESTMENTS LTD. V. FIRSTMISS FERTILIZER, INC.</i> , 744 F. SUPP. 393, 398 VA. 1991).....	14
<i>Helicopteros Nacionales de Columbia, S.A. v. Hall</i> , 466 U.S. 408, 414 (1984).....	15
<i>CHUNG V. NANA DEV. CORP.</i> , 783 F.2D 1124, 1130 (4TH CIR. 1986).....	15
<i>ALS SCAN, INC. V. DIGITAL SERV. CONSULTANTS, INC.</i> , 812 F. SUPP. 1095, 1097-1101 (W.D. WASH. 1993).....	15
<i>BREMEN V. ZAPATA OFF-SHORE CO.</i> , 407 U.S. 1, 10-15, 92 S. CT. 1907, 1913-16, 32 L. ED. 2D 513, 520-23 (1972).....	17
<i>N.H. v. H.H.</i> , 418 N.J. SUPER. 262, (APP. DIV. 2011) (QUOTING <i>MILLER V. MILLER</i> , 160 N.J. 408, 419 (1999))...	17

<u>CASES</u>	<u>PAGES</u>
---------------------	---------------------

<i>MUHAMMAD V. CNTY. BANK OF REHOBOTH BEACH</i> , 189 N.J. 1, 15 (2006).....	17
---	----

<i>SITOGUM HOLDINGS, INC.</i> , 352 N.J. SUPER. 555, 564 (CH. DIV. 2002)	17
---	----

<i>RUDBART V. NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION</i> , 127 N.J. 344, 356, CERT. DENIED, 506 U.S. 871, 113 S. CT. 203, 121 L. ED. 2D 145 (1992).....	17
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<i>MITRANO V. HAWES</i> , 377 F.3D 402, 405 (4TH CIR. 2004)	21
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<i>SUCAMPO PHARMACEUTICALS, INC V. ASTELLAS PHARMA, INC.</i> , 471 F.3D 544, 549-50 (4TH CIR. 2006).....	21
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<u>STATUE</u>	<u>PAGES</u>
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28 U.S.C. § 12B(2).....	13
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28 U.S.C. § 12B(3).....	21
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2 **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS**
3 **PLAINTIFF’S COMPLAINT**

4 1. Defendant Behzad Amini, Pro Se, submits this memorandum of law in support of
5 his Motion to Dismiss Plaintiff’s Complaint, Pursuant to Federal Rules of Civil Procedure
6 12(b)(2), 12(b)(3) As grounds therefore, Defendant states as follows:

7 **PRELIMINARY STATEMENT**
8

9 2. Ross University School of Medicine (hereafter Ross University) is a *for-profit*
10 institution that provides medical education, with a campus on the Caribbean island of Dominica.
11 Ross University’s main administrative office is located in Miramar, Florida, where offices of
12 student services, registrar, and clinical clerkships are located. Ross University’s administrative
13 office in New Jersey only provides Student financing (**Exhibit-1**). Ross University is owned by
14 DeVry, Inc. which is a publicly traded company.

15 3. Defendant Behzad Amini resides in Phoenix, Arizona. He has no connection to New
16 Jersey, such as owning property, maintaining an office or an agent, or directing any business
17 specifically to New Jersey. Mr. Amini never lived in New Jersey before. Decl. ¶ 1

18 4. On October 16, 2013, Ross University filed this lawsuit against Mr. Amini, alleging
19 claims of breach of contract, violation of the anticybersquatting act, trademark dilution in
20 violation of the Federal Trademark Dilution Act of 1995 and related state law, and
21 Infringement of registered trademark in violation of section 32(1) of the Lanham Act and
22 related State law.
23

24 5. On October 16, 2013 Mr. Armini was served by email in Arizona with a Summons
25 and Complaint for this case.
26

1
2
3 6. There is a well-documented history of malicious retaliation by Ross University against
4 Mr. Amini for whistleblowing activities, notwithstanding his excellent performance as a student.

5 7. Ross University attempted three times to force Mr. Amini into signing the settlement
6 agreement in exchange for basic services that any medical student at the university was entitled
7 to receive from its administration. The first attempt is reflected most notably in the “Extension
8 Agreement” for his USMLE 1 proffered in exchange for his perpetual silence about the school
9 and its business practices (**Exhibit-2**). The second attempt was on June 2011 when Ross
10 University refused to schedule Mr. Amini for a clinical rotation unless he signed the settlement
11 agreement. In both instances Mr. Amini refused to sign. On the third attempt, Ross University
12 threatened to take him before the grievance committee unless he signed. Mr. Amini then agreed
13 to sign the agreement and to leave Ross (**Exhibit-3**), New Jersey being the forum of choice for
14 Ross University.
15
16

17 8. But Ross University did not perform its obligations to Mr. Amini under the Settlement
18 Agreement and breached its obligations to Mr. Amini. Specifically, Ross University has breached
19 Section 4.18 of the Settlement Agreement by disclosing to Mr. Amini’s new medical school,
20 AUA, the circumstance of Mr. Amini’s transfer, which led to Mr. Amini’s discharge from AUA
21 on March, 2013.
22

23 9. Mr. Amini has suffered significant damages. First, his medical education has been
24 short-circuited by Ross University. Second, he is in debt for the amount of \$239,000(**Exhibit-4**),
25 for attending Ross University, though he has nothing to show for this financial liability. Third, he
26

1 has had to endure emotional and psychological suffering as a result of the plaintiff actions. Mr.
 2 Amini had no money left to go to New Jersey to file a lawsuit against Ross University.
 3

4 10. In a case very similar to Mr. Amini's, another student, Michael Green, was also
 5 forced to accept a settlement agreement in exchange for very basic services that any Ross
 6 University student is entitled to receive. Attached here as **Exhibit-5** is his settlement
 7 agreement, with New Jersey being the forum of choice for Ross University. Mr. Greene
 8 refused to sign the agreement and he has launched a lawsuit against Ross University. He also
 9 has launched a website against the school at **StopDevry.net**, where he shares about his
 10 experience.
 11

12 11. While the plaintiff and their attorney like to brag about their 97% pass rate for
 13 USMLE, only 52% of Ross Medical students graduate on time compared to the 97% graduation
 14 rate for the average medical school (**Exhibit-6**). There are many students like Mr. Amini, such as
 15 Michael Greene, who are sitting on massive debt, which prompted a US Senator and the media to
 16 start looking into the plaintiff's unethical business practices.
 17

18 12. On September 10, 2013 Illinois Senator Dick Durbin posted on his website the
 19 following complaint that had been filed with the Secretary of the Department of Education
 20 against the plaintiff (**Exhibit-7**). Here is the excerpt of the Senator complaint:
 21

22 “This troubling piece explains how two DeVry-owned foreign
 23 medical schools, American University of the Caribbean School
 24 of Medicine and **Ross University School of Medicine, prey**
 25 **on students who have been rejected by traditional U.S.**
 26 **medical schools. These students are lured into massive**
amounts of debt – much higher than traditional schools –
and receive very little to show for it by way of a useful
degree.”

1
2 13. On September 10, 2013, Bloomberg published the article “DeVry Lures Medical
3 School Rejects as Taxpayers Fund Debt,” describing how the plaintiff is shortchanging taxpayer
4 and students of millions of dollars (**Exhibit-8**).

5 14. After reading the above articles, Mr. Amini decided to share his own personal
6 experience with Ross University to the public. He purchased six domains with the word “Ross”
7 in them on September 21, 2013, activated three of the domains, and published his content up
8 until October 16, 2013 for a total of 24 days.
9

10 15. The entire website is in the record (**Exhibit-9**). Mr. Amini placed a disclaimer at
11 the top of the first page of the website, disclosing to visitors that the website is not
12 associated with Ross University (**Exhibit-10**). Mr. Amini’s website contains no advertising,
13 charges no fees, does not seek to sell anything or direct users to websites that do. Consistent
14 with Mr. Amini’s First Amendment Right of Freedom of Speech, the website seeks only to
15 inform and allow visitors to express their opinions on a variety of topics. The website does not
16 exist for any commercial purpose and it has no defamatory statement against anyone.
17

18 16. In addition to his personal opinion and experience, Mr. Amini’s website provides
19 information that is already of public record or available elsewhere on the internet. The websites
20 had links to Senator Durbin’s web page, the Bloomberg News, the Tampa Bay Times (**Exhibit-**
21 **11**), a few regulatory agencies, and a link to internal documents that are on public record.
22

23 17. After recent negative press against the plaintiff by Bloomberg News, Senator Durbin,
24 and the attorney generals of the states of Illinois and Massachusetts (**Exhibit-12**), the plaintiff is
25 angry and is lashing out against Mr. Amini.
26

1
2 18. Contrary to the claims of the plaintiff that they are an agent of good will, that they
3 are comparable to the average US medical school, and that they are a repeatable medical
4 institution, the evidence suggests otherwise. The public, the taxpayer, and the students are better
5 served by being informed of the truth so that their money is not misspent.

6 **BACKGROUND**

7
8 19. Mr. Amini commenced his studies at the Ross University Dominica campus in
9 January 2009. Mr. Amini was an outstanding student. He maintained a GPA of 3.2 (**Exhibit-13**)
10 while attending Ross University and received recommendation from his attending (**Exhibit-14**).
11 He earned a 91% USMLE Step I (**Exhibit-15**).

12 20. On July, 2010, Mr. Amini emailed a complaint to the president of Ross University,
13 Mr. Tom Shepherd, regarding the high enrollment rate, the high failure rate, the delays in clinical
14 rotations, the violations of the student handbook, the breach of contract, and the sudden change
15 in the grade distribution (**Exhibit-16**). The president of Ross University responded by admitting
16 a mistake had been made in the grade distribution and that he was willing to meet to discuss the
17 complaint. But he never followed through (**Exhibit-17**).

18
19 21. Mr. Amini decided to contact regulatory agencies. In every instance, Mr. Amini
20 informed Ross University officials of his intent and he soon experienced retaliatory responses
21 from the school, and multiple attempts to get him to sign the non-disparagement agreement.

22 22. In September of 2010, Mr. Amini filed a complaint against Ross University with the
23 Medical Board of California regarding the high enrollment rate as well as questioning the
24 academic integrity of Ross University. The Medical Board of California found Mr. Amini's
25 complaint legitimate and started an investigation against Ross University in 2011(**Exhibit-18**).
26

1 23. In September 2010, Mr. Amini filed a complaint against Ross University with the
2 National Board of Medical Examiners for cheating incidents during the comp exam (**Exhibit-19**).

3
4 24. In November 2010, Mr. Amini's mother died in Iran and he requested an extension
5 before taking his board exam. In any other circumstance, an extension would have been granted
6 to other students at their request. However, Ross University required Mr. Amini to provide a
7 proof of death. Since he had no family left in Iran except for his estranged father, he had to travel
8 to Iran to obtain this certificate. Upon his arrival, he was arrested and taken to prison, where he
9 was kept for three weeks and subject to interrogation and torture. After being released from
10 prison, Mr. Amini came back to the US and submitted the certificate of death to Ross University,
11 upon which Ross University granted him a thirty-day extension.
12

13 25. Since Mr. Amini had spent over a month in Iran in order to acquire this certificate for
14 Ross, he asked Ross University for an additional extension. Ross University, however, would not
15 grant an extra extension unless Mr. Amini signed a non-disparagement agreement (**Exhibit-2**).

16 26. Mr. Amini refused to sign, and instead took his USMLE Step-1 exam as scheduled,
17 passing with a score of 91% (**Exhibit-15**).

18 27. This was the first attempt by Ross University to force Mr. Amini into signing a non-
19 disparagement agreement in exchange for granting him the very basic educational services that
20 any other medical student at the university was entitled to.
21

22 28. On July 2011, Mr. Amini filed a complaint against Ross University with the
23 Department of Education for delaying clinical rotations (**Exhibit-20**). When Mr. Amini tried to
24 arrange for another rotation after he had submitted his complaint, Ross University refused to
25 schedule his rotation, and instructed him to have his attorney contact the school.
26

1 29. Mr. Amini asked his ex-wife, who was an attorney, to speak with William Gyves,
2 Ross University's attorney. Mr. Gyves told her that Ross University didn't want Mr. Amini to
3 graduate. In order for Mr. Amini to move forward, he would have to sign a non-disparagement
4 agreement.
5

6 30. This was the second attempt by Ross University to force Mr. Amini into signing a
7 non-disparagement agreement in exchange for granting him the very basic educational services
8 that any other medical student at the university was entitled to.
9

10 31. Mr. Amini's ex-wife informed William Gyves that he would only agree to a verbal
11 assurance if Mr. Amini would not say anything negative against Ross University as long as Mr.
12 Amini received his clinicals rotations without any interruption to his medical education. They
13 agreed.
14

15 32. The rotation Ross University setup for Mr. Amini, however, was at Jamaica Hospital
16 in New York, which was a very bad assignment. Mr. Amini requested a better hospital, but his
17 request was denied. Mr. Amini's first rotation was OBGYN. His clinical supervisor accused Mr.
18 Amini of having bad body odor (**Exhibit-21**). He did everything she requested, even working
19 extra hours, but Mr. Amini's supervisor was not satisfied.
20

21 33. In Mr. Amini's absence, his OBGYN supervisor discussed Mr. Amini's body odor
22 with two other students to humiliate Mr. Amini further. Other students began to ridicule Mr.
23 Amini about his body odor as well, particularly Roger Curry, an SGA student, whose statement
24 Ross University used later on as a pretext to drag Mr. Amini before the grievance committee.
25

26 34. In response, Mr. Amini's ex-wife wrote a cease and desist letter to the OBGYN
department head, asking him to investigate the matter (**Exhibit-22**). The department never

1 responded, and Mr. Amini was told by another supervisor that Ross University had contacted the
2 department prior to his rotation to warn them about him in order to make Mr. Amini's life
3 difficult at Jamaica Hospital. When Mr. Amini asked Ross to investigate, they never did.
4

5
6 35. The harassment by Roger Curry and another student, Anupam Gupta, continued into
7 Mr. Amini's next rotation, pediatrics, at Jamaica Hospital. The two students were disparaging Mr.
8 Amini about his body odor and about his low grade from OBGYN. They both constantly talked
9 about him behind his back and would publically humiliate him.
10

11 36. In all that time, Mr. Amini never responded to their negativism. When the six-week
12 rotation ended, the supervisor, Dr. Friedman, met with each student individually. At the meeting
13 with Mr. Amini, he told him that Ross University had made negative comments about him, but
14 that he would not judge Mr. Amini by what Ross University has said, but by his performance at
15 the hospital. Mr. Amini received an "A."
16

17 37. The day Mr. Amini's pediatric rotation ended at Jamaica Hospital, he received an
18 email from Ross University, stating they wanted to take him before the grievance committee.
19 Apparently Anupam Gupta, who had been harassing Mr. Amini, made a claim against him. The
20 claims were unfounded.
21

22 **GRIEVANCE HEARING PROCESS**

23 38. Ross University wouldn't grant Mr. Amini due process for the grievance hearing.
24 First, Ross University hired an IT investigator to find any defamatory information against Mr.
25 Amini to use at the grievance committee. This investigator never spoke to Mr. Amini at all
26 during these investigations, asking for his side of the story. Second, Ross University did not
follow its own internal procedures – as outlined in the student handbook – for a fair grievance

1 process. Mr. Amini had to hire an attorney, George Cotz, to help him. Attached here as **Exhibit-**
 2 **23**, are two letters that attorney Cotz wrote to Ross University's attorney, stating that Ross
 3 University was not following its own internal guidelines.
 4

5 39. Even after attorney Cotz's involvement, Ross University wouldn't grant Mr. Amini
 6 request for due process as defined in their internal guidelines. Then Mr. Amini asked another
 7 attorney, Colleen Kerwick, to get involved. Again Ross University wouldn't grant Mr. Amini
 8 due process. Therefore, Mr. Amini was not able to adequately defend himself.
 9

10 40. During his internal medicine rotation at Griffin Hospital, Mr. Amini experienced a
 11 nervous breakdown due to emotional distress as result of Ross University's intent to kick him out
 12 of the program. A few days prior to the signing of the non-disparagement agreement, Mr. Amini
 13 left his hospital abruptly and left for Phoenix with the intent to take his own life. His attorney
 14 became alarmed and contacted Mr. Amini's ex-wife. After a couple of days, Mr. Amini's ex-
 15 wife was able to locate him and encouraged him to sign the agreement and transfer to another
 16 university.
 17

18 **SETTLEMENT AGREEMENT**

19 41. After realizing that he would not be able to receive a fair hearing, Mr. Amini agreed
 20 to sign a settlement agreement and leave Ross University. Like the grievance procedure, the
 21 settlement agreement was basically a "take it or live it" proposal in which Mr. Amini was given
 22 no option to change any of the terms, including the forum clause of the agreement. Mr. Amni
 23 finally succumbed to Ross's stressful tactics, signed a non-disparaging agreement in February
 24 2012, and transferred to AUA in April 2012.
 25

26 **BREACH OF CONTACT: VIOLATION OF SETTLEMENT AGREEMENT**

1 42. After Mr. Amini transferred to his new medical school, AUA, he started
2 experiencing mistreatment without knowing the cause. The mistreatment was mainly related to
3 constant delays in scheduling his clinical rotations, which was what Mr. Amini needed to be able
4 to finish his medical education and start his residency. He informed both his attorney and Ross'
5 attorney that he believed Ross had contacted AUA after his transfer to AUA, but the attorney for
6 Ross denied the allegation.
7

8 43. Then the clinical scheduling delays got worse to the point that Mr. Amini had to ask
9 a physician friend to deal with AUA to arrange his clinical rotations on his behalf as Mr. Amini
10 experienced a nervous breakdown due to emotional distress.
11

12 44. Even after the friend's involvement, the problems continued. He finally personally
13 responded to the school, and AUA used that response as a pretext to drag Mr. Amini before the
14 grievance committee and dismiss him from AUA.

15 45. On May 18, 2013, Mr. Amini was informed by his attorney, George Cotz, that the
16 attorney for AUA, Mr. Len Sclafani, stated that they had information, indicating that Mr. Amini
17 transferred to AUA from Ross University without disclosing to AUA the circumstances of his
18 transfer from Ross University.
19

20 46. Given the history of animosity against Mr. Amini, including the retaliation resulting
21 from his complaints to the various regulatory agencies, the repeated denials of basic educational
22 services normally granted to other students, the repeated attempts by Ross University to force Mr.
23 Amini to sign the NDAs in exchange for those services, and the information provided by AUA's
24 attorney to Mr. Amini's attorney on May 18, 2013, the circumstantial evidence points only to
25 one suspect, Ross University.
26

1
2 47. Therefore, Ross University did not perform its obligations to Mr. Amini under the
3 Settlement Agreement and breached its obligations to Mr. Amini. Specifically, Ross University
4 has breached Section 4.18 of the Settlement Agreement by disclosing to Mr. Amini's new
5 medical School, AUA, the circumstance of Mr. Amini's transfer, which led to dismissal of Mr.
6 Amini's discharge from AUA on March, 2013.

7
8 48. The settlement agreement was a fraud. Fraud was the plaintiff's silence, knowing
9 that they were about to disclose, or already disclosed, to Mr. Amini's new medical School, AUA,
10 the circumstance of Mr. Amini's transfer, which led to Mr. Amini's discharge from AUA in
11 March 2013. Mr. Amini relied on the false impression of finishing his education, and was
12 therefore damaged as a result of relying upon this false information.

13
14 49. By refusing to provide the very basic services that any medical student at the
15 university is entitled to receive, Ross University used its bargaining power to force a weaker
16 party, Mr. Amini, to agree to its terms, leaving Mr. Amini with no power to negotiate. To Mr.
17 Amini, the non-disparagement agreement was nothing more than a contract of adhesion, a
18 boilerplate contract that Ross University attempted three times to shove down his throat after
19 repeatedly denying him normal student services. Ross University finally succeeded on its third
20 attempt. The terms and conditions of the contract were set by Ross University, and Mr. Amini
21 had little or no ability to negotiate more favorable terms, thus placing him in a "take it or leave
22 it" position.

23
24
25 50. Furthermore, the settlement agreement was not negotiated in good faith and was
26 forced upon Mr. Amini. Ross University attempted three times to force him into signing the

1 settlement agreement in exchange for basic services that any medical student at the university
 2 was entitled to receive from its administration. The first attempt was in April 2011 in exchange
 3 for a 30-day extension for taking his USMLE exam (**Exhibit-11**). The second time was in June
 4 2011 when Ross University refused to schedule Mr. Amini for a rotation unless he signed the
 5 settlement agreement. In both instances Mr. Amini refused to sign. On the third attempt, Ross
 6 University threatened to take him before the grievance committee unless he signed. Mr. Amini
 7 then agreed to sign the agreement and to leave Ross.
 8
 9

10 **STATEMENTS OF FACTS**

11 51. Defendant Behzad Amini resides in Phoenix, Arizona. He has no connection to the
 12 state of New Jersey. He doesn't own property, bank accounts, maintain an office or an agent, or
 13 direct any business specifically to New Jersey. Mr. Amini has never resided in New Jersey. Decl.
 14 ¶ 1.

15 52. The defendant owes US taxpayers \$239,375 as result of his medical education at
 16 Ross University. Decl. ¶ 2.

17 53. The defendant is unemployed and is unable to pay his student loan.

18 54. The defendant has less than \$700 left in his bank account. Decl. ¶ 3.

19 55. The defendant cannot afford an attorney. Decl. ¶ 4.

20 56. The defendant has no health insurance plan. Decl. ¶ 5.

21 57. The defendant has not been able to visit his 7 years old daughter in Canada due to
 22 financial difficulties. Decl. ¶ 6.
 23
 24
 25
 26

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(B)(2) AS MR. AMINI IS NOT SUBJECT TO PERSONAL JURISDICTION IN THIS COURT.

58. Federal Rule of Civil Procedure 12(b)(2) requires dismissal of an action when the court lacks personal jurisdiction over the defendant. “When the exercise of personal jurisdiction is challenged pursuant to Rule 12(b)(2), Fed.R.Civ.P., the question ‘is one for the judge, with the burden on the plaintiff ultimately to prove the existence of a ground for jurisdiction by the preponderance of the evidence.

59. Once a defendant raises questions of personal jurisdiction, plaintiff bears the burden to prove, by a preponderance of the evidence, facts sufficient to establish personal jurisdiction. *Carterer Sav. Bank, F.A. v. Shushan*, 954 F.2d 141 (3rd Cir. 1992), *rehearing den.*, *cert.den.*, 113 S.Ct. 61, 506 U.S. 817, 121 L.Ed.2d (1992).

59. New Jersey's long-arm statute provides for personal jurisdiction as far as the Fourteenth Amendment of the United States Constitution permits. Therefore, federal constitutional law determines long-arm jurisdictional questions in New Jersey. *Decker v. Circus Circus Hotel*, 49 F.Supp.2d. 361 (D.N.J. 1999).

60. To establish jurisdiction over Mr. Amini, who does not reside in New Jersey, this Court must first consider whether jurisdiction is authorized by New Jersey law. The analysis of personal jurisdiction is normally a two-step inquiry, requiring the application of both statutory and constitutional components. *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002).

1
2 61. To carry its burden of demonstrating that Mr. Amini's contacts with New Jersey are
3 sufficient to confer personal jurisdiction, plaintiff must show with "reasonable particularity" that
4 New Jersey had either specific jurisdiction, where cause of action arose from the defendant's
5 activities within New Jersey, or general jurisdiction from defendant's continuous and systematic
6 conduct in New Jersey. *See Giangola v. Walt Disney World Co.*, 753 F.Supp. 148 (D.N.J. 1990).

7 62. "[T]he constitutional touchstone" of the determination whether an exercise of
8 personal jurisdiction comports with due process "remains whether the defendant
9 purposefully established 'minimum contacts' in the forum State." *Burger King Corp. v.*
10 *Rudzewicz*, 471 U.S. 462, 474 (1985), quoting *International Shoe Co. v. Washington*, 326 U.S.
11 310, 316 (1945). "Minimum contacts must have a basis in 'some act by which the defendant
12 purposefully avails itself of the privilege of conducting activities within the forum State, thus
13 invoking the benefits and protections of its laws." *Asashi Metal Industry Co. v. Superior Court*,
14 480 U.S. 102 (1987), citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), and *Burger King*,
15 471 U.S. at 475. "Jurisdiction is proper . . . where the contacts proximately result from actions
16 by the defendant himself that create a 'substantial connection' with the forum State." *Id.*,
17 quoting *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957).
18
19

20 63. The key factor of statutory jurisdiction is purposeful activity in the Commonwealth.
21 *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Therefore it is necessary to examine carefully the
22 nature of a Mr. Amini's contacts with New Jersey in order to determine whether he may fairly be
23 subjected to suit. *Superfos Investments Ltd. v. FirstMiss Fertilizer, Inc.*, 744 F. Supp. 393, 398
24 Va. 1991).
25
26

1
2
3 **1. MR. AMINI DID NOT PURPOSEFULLY AVAIL HIMSELF OF**
4 **THE PRIVILEGE OF CONDUCTING ACTIVITIES IN NEW**
5 **JERSEY**

6 68. As to the first prong of this test the Fourth Circuit has provided a number of
7 factors to consider in determining what constitutes “purposeful availment”:

- 8 (a) Whether the defendant maintains offices or agents in the forum state;
9 (b) Whether the defendant owns property in the forum state;
10 (c) Whether the defendant reached into the forum state to solicit or initiate business;
11 (d) Whether the defendant deliberately engaged in significant or long-term
12 business activities in the forum state;
13 (e) Whether the parties contractually agreed that the law of the forum state
14 would govern disputes;
15 (f) Whether the defendant made in-person contact with the resident of the forum
16 in the forum state regarding the business relationship;
17 (g) The nature, quality and extent of the parties’ communications about the
18 business being transacted; and
19 (h) Whether the performance of contractual duties was to occur within the forum.
20
21

22 *Consulting Eng’rs*, 561 F.3d at 278.

23 69. Mr. Amini resides in Phoenix, Arizona. He has no connection to New Jersey, such
24 as owning property, maintaining an office or an agent, or directing any business specifically to
25 New Jersey. Mr. Amini never lived in New Jersey before. Decl. ¶ 1.
26

1
2 70. A forum selection clause is enforceable unless it results from “fraud, undue
3 influence, or overweening bargaining power,” is “unreasonable” or “violates” a “strong public
4 policy.” *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10-15, 92 S. Ct. 1907, 1913-16, 32
5 L. Ed. 2d 513, 520-23 (1972). “Absent ‘unconscionability, fraud, or overreaching in the
6 negotiations of the settlement, ... no legal or equitable basis exists to reform the parties’
7 property settlement agreement.” *N.H. v. H.H.*, 418 N.J. Super. 262, 282 (App. Div. 2011)
8 (quoting *Miller v. Miller*, 160 N.J. 408, 419 (1999)).
9

10 71. As stated by the court, unconscionability can be manifested in two ways. The first is
11 procedural unconscionability, which involves a “variety of inadequacies, such as age, literacy,
12 lack of sophistication, hidden or unduly complex contract terms, bargaining tactics, and the
13 particular setting existing during the contract formation process....” *Muhammad v. Cnty. Bank*
14 *of Rehoboth Beach*, 189 N.J. 1, 15 (2006), (quoting *Sitogum Holdings, Inc.*, 352 N.J. Super.
15 555, 564 (Ch. Div. 2002)) cert. denied, 549 U.S. 1338, 127 S. Ct. 2032, 167 L. Ed. 2d 763
16 (2007). The second is substantive unconscionability, which is determined by applying the four
17 factors identified by Court in *Rudbart v. North Jersey District Water Supply Commission*, 127
18 N.J. 344, 356, cert. denied, 506 U.S. 871, 113 S. Ct. 203, 121 L. Ed. 2d 145 (1992). These
19 factors are: “[1] the subject matter of the contract, [2] the parties’ relative bargaining positions,
20 [3] the degree of economic compulsion motivating the ‘adhering’ party, and [4] the public
21 interests affected by the contract.”
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1 72. The alleged settlement agreement is attached to the complaint as Exhibit-21. First,
2 Mr. Amini contests that the settlement agreement was a fraud. Fraud was the plaintiff's silence,
3 knowing that they had already, or were about to disclose to Mr. Amini's new medical School,
4 AUA, the circumstance of Mr. Amini's transfer, which led to Mr. Amini's discharge from AUA
5 in March 2013. Mr. Amini relied on the false impression of finishing his education, and was
6 therefore damaged as a result of relying upon this false information.
7

8 73. Second, by refusing to provide the very basic services that any medical student at the
9 university is entitled to receive, Ross University used its bargaining power to force a weaker
10 party, Mr. Amini, to agree to its term, leaving Mr. Amini with no power to negotiate. To Mr.
11 Amini, the non-disparagement agreement was nothing more than a contract of adhesion, a
12 boilerplate contract that Ross University attempted three times to shove down his throat after
13 repeatedly denying him normal student services. Ross University finally succeeded on its third
14 attempt. The terms and conditions of the contract were set by Ross University, and Mr. Amini
15 had little or no ability to negotiate more favorable terms, thus placing him in a "take it or leave
16 it" position.
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18 74. Third, the settlement agreement was not negotiated in good faith and was forced
19 upon Mr. Amini. Ross University attempted three times to force him into signing the settlement
20 agreement in exchange for basic services that any medical student at the university was entitled
21 to receive from its administration. The first attempt was on April 2011 in exchange for a 30-day
22 extension for taking his USMLE exam (**Exhibit-17**). The second time was on June 2011 when
23 Ross University refused to schedule Mr. Amini for a rotation unless he signed the settlement
24 agreement. In both instances Mr. Amini refused to sign. On the third attempt, Ross University
25
26

1 threatened to take him before the grievance committee unless he signed. Mr. Amini then agreed
2 to sign the agreement and to leave Ross.
3

4 75. Fourth, Ross University's choice in the forum selection clause arises from nothing
5 more than forum shopping, conveniently selecting New Jersey where the plaintiff's law firm,
6 Epstein Becker & Green, is located. In the present case, the plaintiffs' main business is located
7 outside of the state of New Jersey. The school campus is located on the Caribbean island of
8 Dominica, the main administrative office is located in Miramar, Florida, and the dean of Ross
9 University Medical School lives in Florida. The president of Ross University lives outside of
10 New Jersey. Almost all of the witnesses for this case live outside of the great state of New Jersey.
11 Again, the New Jersey office only handles student finance (**Exhibit-1**).
12

13 76. Fifth, Ross University and their attorney's choice of New Jersey in the forum clause
14 makes it impossible for students who can't afford to fly across the country to launch a complaint
15 against the plaintiff in New Jersey or have their day in the court in case of any dispute in the case.
16 Mr. Amini did request for a change of venue, but the plaintiff's attorney wouldn't agree,
17 essentially holding a "take it or leave it" position.
18

19 77. In a case very similar to Mr. Amini's, another student, Michael Green, was also
20 forced to accept a settlement agreement in exchange for very basic services that any Ross
21 University student is entitled to receive. Attached here as **Exhibit-5** is his settlement
22 agreement with New Jersey being the forum of choice for Ross University. Mr. Greene refused
23 to sign the agreement and he has launched a lawsuit against Ross University. He also has
24 launched a website against the school at StopDevry.net, where he shares about his experience.
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1 78. Accordingly, for each of these reasons, plaintiff cannot satisfy the first prong of the
2
3 three-part test required to exercise personal jurisdiction over Mr. Amini.

4 **2. PLAINTIFF’S CLAIMS DO NOT ARISE OUT OF ACTIVITIES**
5 **DIRECTED AT NEW JERSEY**

6 79. Under the second prong of the three-part test, the Court must consider whether
7 plaintiff’s claims arise out of activities directed at New Jersey. *ALS Scan.*, 293 F.3d at 712. Here,
8 they do not. There is no evidence suggesting that Mr. Amini’s activities were directed at New
9 Jersey.
10

11 **3. THE EXERCISE OF JURISDICTION WOULD NOT BE**
12 **CONSTITUTIONALLY REASONABLE.**

13 80. None of Mr. Amini’s website or internet activities were substantially related to New
14 Jersey. Accordingly, plaintiff cannot satisfy the third prong, or any prong, of the three-part test,
15 and New Jersey cannot exercise specific personal jurisdiction over Mr. Amini.
16

17 **B. NEW JERSEY LACKS GENERAL PERSONAL JURISDICTION BECAUSE MR.**
18 **AMINI DOES NOT HAVE CONTINUOUS AND SYSTEMATIC CONTACTS WITH**
19 **NEW JERSEY**

20 81. “Even when a cause of action does not arise out of or relate to the [non-resident
21 defendant’s] activities in the Forum State, due process is not offended by the States subjecting
22 the [non-resident defendant] to its in personam jurisdiction when there are sufficient contacts
23 between the States and the [non-resident defendant].” *Helicopteros*, 466 U.S. at 414. These
24 contacts must be “continuous and systematic” in order to support general personal jurisdiction
25 over Mr. Amini. *Superfos*, 774 F. Supp. at 399.
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1 82. Mr. Amini resides in Phoenix, Arizona. He has no connection to New Jersey, such
2 as owning property, bank accounts, maintaining an office or an agent, or directing any business
3 specifically to New Jersey. Mr. Amini never lived in New Jersey before. Decl. ¶1.

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5 83. Based on the facts presented in this case, Mr. Amini contacts with New Jersey do
6 not rise to the level of “continuous and systematic” as required by due process. Accordingly,
7 the Court may not exercise in personam jurisdiction over Mr. Amini.

8 **II. THE COMPLAINT SHOULD BE DISMISSED FOR IMPROPER VENUE**
9 **UNDER RULE 12(B)(3).**

10 84. The allegations are insufficient on its face, and this case should also be dismissed
11 based on improper venue under Rule 12(b)(3). In the Fourth Circuit, courts consider the “entire
12 sequence of events underlying the claim” to determine where venue is appropriate. *See Mitrano*
13 *v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004). A court does not take all facts pled in the
14 complaint as true, and is free to consider facts outside the pleadings. *Sucampo*
15 *Pharmaceuticals, Inc v. Astellas Pharma, Inc.*, 471 F.3d 544, 549-50 (4th Cir. 2006). Once
16 venue is challenged, the plaintiff bears the burden of showing that venue is proper. *Rice*
17 *Contracting Corp. v. Callas Contractors, Inc.*, No. 1:08cv1163, 2009 U.S. Dist. LEXIS 3, 2009
18 WL 21597, at *1 (E.D. Va.Jan. 2, 2009). Plaintiff cannot meet its burden here.

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20 85. In short, Mr. Amini resides in Phoenix, Arizona. He has no connection to New
21 Jersey, such as owning property, maintaining an office or an agent, or directing any business
22 specifically to New Jersey. Mr. Amini never lived in New Jersey before. Mr. Amini wrote the
23 content of his website outside of New Jersey, and published his website outside of New Jersey.
24 No “substantial part” of those acts is alleged to have occurred in this district, and venue is
25 therefore inappropriate here.
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CONCLUSION

86. For all the foregoing reasons, the Court should enter an order: dismissing the Complaint in its entirety under Rules 12(b)(2) and 12(b)(3);

WHEREFORE, the Defendant, Behzad Amini, requests this Court grant Motion to dismiss, for the foregoing reasons, based on the above cited authorities.

Dated: 28 of October, 2013.

Behzad Amini – Pro Se

VERIFICATION

I, Behzad Amini, hereby verify and certify under 28 U.S.C. § 1746 to the following facts:

1. I am the defendant in the above case.
2. I have read the foregoing motion and know the contents thereof, and the same is true to my own knowledge, except to those matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: 28 of October, 2013.

Behzad Amini – Pro Se